

APPEAL NO. 170206
FILED MARCH 24, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 27, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to MRI findings taken of the lumbar spine on September 18, 2014 (L4-5 remodeling of endplates and posterior longitudinal ligament laxity in right exit zone with no foraminal stenosis, paraspinal muscle atrophy on the right greater than the left side which extends toward the sacrum); L4-5 nerve compression; disc desiccation narrowing of L4-5; lumbar intervertebral disc syndrome; post-laminectomy syndrome; intervertebral disc displacement at L4-5 and L5-S1; lumbago with sciatica right side; MRI findings of the lumbar spine taken on August 25, 2016 (at L2-3: mild annular disc bulging and anterior endplate spondylosis; at L3-4: disc mild desiccation and annular bulging, a 5 mm left foraminal disc herniation, the exiting left L3 nerve root is slightly displaced, and mild facet arthritis; at L4-5: diminished disc height with desiccation, generalized annular bulging and circumferential spondylosis, shallow left foraminal to lateral extraforaminal disc protrusion, and moderate right neural foramen stenosis with exiting right L4 nerve root impingement in the foramen), and a lateral meniscus tear; a high grade partial tear of the ACL; 1-2 cm loose body in the posterior medial joint space; internal derangement; edema; a peripheral tear of the lateral meniscus and medial meniscus; a sprain and tear of the ACL of the right knee; (2) the appellant (claimant) did not have disability from March 27, 2015, and continuing through the date of the hearing as a result of the compensable injury on (date of injury); (3) the claimant reached maximum medical improvement (MMI) on April 13, 2015; (4) the claimant's impairment rating (IR) is zero percent; and (5) the first certification of MMI and assigned IR from (Dr. R) on April 13, 2015, did become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12).

The claimant appealed the hearing officer's decision arguing that such determinations are contrary to the evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that she sustained an injury on (date of injury), while performing her duties as a production technician when she slipped and fell onto her back. The parties stipulated that the compensable injury extends to at least a right knee sprain, right lower leg sprain, and lumbar sprain. The parties further stipulated that the

certification of MMI and assigned IR from Dr. R was the first valid certification in the case and that the claimant received a copy of Dr. R's Report of Medical Evaluation (DWC-69) certifying MMI and assigning an IR by verifiable means on April 24, 2015.

DISABILITY

The hearing officer's determination that the claimant did not have disability from March 27, 2015, and continuing through the date of the hearing is supported by sufficient evidence and is affirmed.

FINALITY

The hearing officer's determination that first certification of MMI and assigned IR from Dr. R on April 13, 2015, became final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

MMI

The hearing officer's determination that the claimant reached MMI on April 13, 2015, is supported by sufficient evidence and is affirmed.

IR

The hearing officer's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

That portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to MRI findings taken of the lumbar spine on September 18, 2014 (L4-5 remodeling of endplates and posterior longitudinal ligament laxity in right exit zone with no foraminal stenosis, paraspinal muscle atrophy on the right greater than the left side which extends toward the sacrum); L4-5 nerve compression; disc desiccation narrowing of L4-5; lumbar intervertebral disc syndrome, post-laminectomy syndrome, intervertebral disc displacement at L4-5 and L5-S1, lumbago with sciatica right side, MRI findings of the lumbar spine taken on August 25, 2016 (at L2-3: mild annular disc bulging and anterior endplate spondylosis; at L3-4: disc mild desiccation and annular bulging, a 5 mm left foraminal disc herniation, the exiting left L3 nerve root is slightly displaced, and mild facet arthritis; at L4-5: diminished disc height with desiccation, generalized annular bulging and circumferential spondylosis, shallow left foraminal to lateral extraforaminal disc protrusion, and moderate right neural foramen stenosis with exiting right L4 nerve root impingement in the foramen), and a lateral meniscus tear, a high grade partial tear of the ACL, 1-2 cm loose body in the

posterior medial joint space, internal derangement, edema, a peripheral tear of the lateral meniscus and medial meniscus, a sprain and tear of the ACL of the right knee is supported by sufficient evidence and is affirmed.

We note that the disputed conditions listed in the extent-of-injury issue before the hearing officer include those conditions listed in the preceding paragraph as well as lumbar radiculopathy. In Finding of Fact No. 4 of her Decision and Order, the hearing officer determined that lumbar radiculopathy was not caused, accelerated, worsened or enhanced as a result of the compensable injury and that finding is supported by sufficient evidence; however, the hearing officer failed to include a determination regarding the compensability of lumbar radiculopathy in either her conclusions of law or the Decision section of her Decision and Order. We accordingly reverse the hearing officer's decision as being incomplete and render a new decision that the compensable injury of (date of injury), does not extend to lumbar radiculopathy.

SUMMARY

We affirm the hearing officer's determination that the claimant did not have disability from March 27, 2015, and continuing through the date of the hearing.

We affirm the hearing officer's determination that that first certification of MMI and assigned IR from Dr. R on April 13, 2015, became final under Section 408.123 and Rule 130.12.

We affirm the hearing officer's determination that the claimant reached MMI on April 13, 2015.

We affirm the hearing officer's determination that the claimant's IR is zero percent.

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to MRI findings taken of the lumbar spine on September 18, 2014 (L4-5 remodeling of endplates and posterior longitudinal ligament laxity in the right exit zone with no foraminal stenosis, paraspinal muscle atrophy on the right greater than the left side which extends toward the sacrum); L4-5 nerve compression; disc desiccation narrowing of L4-5; lumbar intervertebral disc syndrome, post-laminectomy syndrome, intervertebral disc displacement at L4-5 and L5-S1, lumbago with sciatica right side, MRI findings of the lumbar spine taken on August 25, 2016 (at L2-3: mild annular disc bulging and anterior endplate spondylosis; at L3-4: disc mild desiccation and annular bulging, a 5 mm left foraminal disc herniation, the exiting left L3 nerve root is slightly displaced, and mild facet arthritis; at L4-5: diminished disc height with desiccation, generalized annular bulging and circumferential spondylosis, shallow left foraminal to lateral extraforaminal disc protrusion, and moderate right neural foramen stenosis with exiting right L4 nerve root impingement in the foramen), and a lateral meniscus tear, a high grade partial tear of the ACL, 1-2 cm loose body in the posterior medial joint space, internal derangement, edema, a peripheral tear of the lateral meniscus and medial meniscus, a sprain and tear of the ACL of the right knee.

We reverse the hearing officer's decision as being incomplete and render a new decision that the compensable injury of (date of injury), does not extend to lumbar radiculopathy.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge